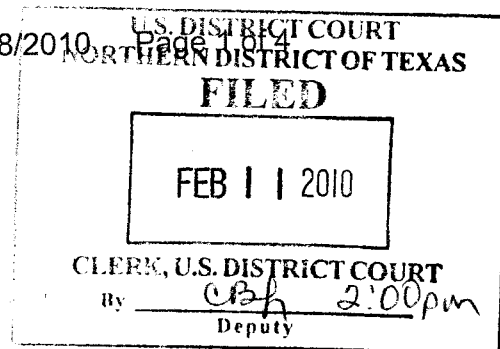


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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
PECOS DIVISION



FREDDY DOMINGUEZ

vs.

EDUARDO CARMONA, RODRIGUEZ,
BLACKWELL, DOMINGUEZ, WORTHINGTON,
VELA, DENISE DESHIELD, SHERI TALLEY,
DEANA, TIMOTHY REVELL, ARCHER BRANCHT

§
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§

NO: PE:08-CV-00031-RAJ

5-10CV0025-C

ORDER ADOPTING THE MAGISTRATE'S REPORT AND RECOMMENDATION

On this day, the Court considered the Report and Recommendation of United States Magistrate Judge B. Dwight Goains, filed in the above-captioned cause on January 13, 2010, in connection with a 42 U.S.C. § 1983. There was no timely objection to this recommendation. After due consideration, the Court is of the opinion that the Magistrate Judge's Report and Recommendation is neither clearly erroneous nor contrary to law and should therefore be **ADOPTED IN ITS ENTIRETY**.

I. Referral

Pursuant to 28 U.S.C. § 636(b)(1)(B), a district court may, on its own motion, refer a pending matter to a United States Magistrate Judge for a Report and Recommendation. The losing party may contest the Report and Recommendation by filing written objections within ten days of being served with a copy of the Report and Recommendation. 28 U.S.C. § 636(b)(1). The objections must specifically identify those findings or recommendations to which objections are being made. The district court need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n*, 834 F.2d 419 (5th Cir. 1987) (the district court need not consider objections that are frivolous, conclusive, or general in nature).

II. De Novo Review

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within ten (10) days after being served with a copy of the Report and Recommendation shall bar that party from *de novo* review by the district court of the proposed findings and recommendations and, except upon grounds of plain error, shall bar the party from appellate review of proposed factual findings and legal conclusions accepted by the district court to which no objections were filed. 28 U.S.C. § 636(b)(1)(C); *Douglas v. United States' Automobile Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc) (failure to raise objections to the magistrate's

recommendations waives that party's right to review in the district court and those claims not preserved by such objection are waived on appeal); *U.S. v. Wilson*, 864 F.2d 1219 (5th Cir.1989); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985).

Plaintiff did not file any timely objections to the Report and Recommendation. This Court now finds that since no objections were filed, *de novo* review was not triggered.

III. Background

By way of background, Plaintiff Dominguez is currently incarcerated in the Texas Department of Criminal Justice Smith Unit in Dawson County, Lamesa, Texas. Plaintiff filed his complaint concerning his stay at the Texas Department of Criminal Justice Lynaugh Unit in Fort Stockton, Texas. Plaintiff filed his complaint on August 28, 2008 after placing such in the U.S. Mail on August 12, 2008, in which he complains that Defendants were deliberately indifferent to his medical needs and retaliated against him by denying him pain medications and meals. Plaintiff seeks unspecified monetary damages as well as an injunction to require TDCJ perform back surgery on him.

IV. Findings of the Magistrate

The Defendants assert a time bar and the Magistrate found that Plaintiff knew of his injury in 2001 (or at the latest July 25, 2002), although he claims that the medical indifference, retaliation, denial of meals, etc. began on February 26, 2006, which therefore, began the statute of limitations. Plaintiff had until February 26, 2008 to file his complaint, but it wasn't filed until August 12, 2008. Plaintiff is therefore time-barred. Plaintiff's complaint must be dismissed for failing to state a claim for which relief may be granted.

This Court, having reviewed the Magistrate Judge's Report and Recommendation, agrees in the legal reasoning and analysis of the Magistrate. This Court finds no reason to disturb the Magistrate's ruling, and therefore, adopts the Report and Recommendation in its entirety.

V. Conclusion

After thoroughly reviewing the Magistrate's conclusions and the underlying facts of this case, including the pleadings from both sides, this Court is compelled to agree with the factual and legal conclusions made by the Magistrate.

Accordingly, because the Magistrate Judge's findings and recommendation are neither clearly erroneous nor

contrary to law, the Court **ORDERS** that the Report and Recommendation be **ADOPTED IN ITS ENTIRETY**.

Additionally, following the Recommendation of the Magistrate, as Plaintiff's case is dismissed for failure to state a claim upon which relief may be granted, it should count as a **STRIKE** pursuant to 28 U.S.C. § 1915(g) and a copy of this order should be sent to: **Betty Parker, United States District Court, 211 W. Ferguson, Tyler, Texas 75702.**

IT IS ALSO ORDERED that, following the Recommendation of the Magistrate, Docket Numbers 12 & 20 should be **TRANSFERRED** to the U.S. District Court for the Northern District of Texas, Lubbock Division, as they appear to be stating a new claim for relief under § 1983 regarding his current incarceration in Lamesa, Texas.

IT IS FINALLY ORDERED that all other pending motions not specifically addressed in this order, if any, are **DENIED AS MOOT**.

IT IS SO ORDERED.

Signed this 8th day of February, 2010.

A handwritten signature in black ink, appearing to read "Robert J. Givens", is written over a horizontal line.